IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-12-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.6815 of 1999

1.S.Thilagavathy
2.S.Sivakumar
3.S.Sankar
4.S.Senthilkumar, (Major) .. Petitioners.
(Cause title amended and declared
4th petitioner as major by MJJ in
M.P.No.676 of 2007 in W.P.No.6815
of 1999)

Versus

1.The Chief Controlling Revenue
Authority and Inspector General
of Registration, Chennai.

2.The Assistant Inspector General of
Registration, North Madras, Chennai.

3.The Sub-Registrar, Royapuram,
Chennai-13. .. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai, the 1st respondent herein to state a case under Section 57(1) of the Indian Stamp Act and refer the question of law set out of the affidavit in para 9 and in para 15 of the petition, dated 7.9.97 and such other question of law as may arise out of the order, dated 28.3.97, made in proceedings PM No.47803/96/03/96 of the 1st respondent.

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For petitioners : Mr.P.Veeraraghavan

For respondents : Mr.V.Manoharan
Government Advocate

O R D E R

Heard Mr.P.Veeraraghavan, the learned counsel appearing for the petitioners and Mr.V.Manoharan, the learned Government Advocate appearing for the respondents.

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2. It is stated by the second petitioner that the first petitioner in the writ petition is his mother and the other petitioners are his brothers. The second petitioner's father S.Sivaramakrishnan and the petitioners were members of a Hindu undivided family of which the second petitioner's father was the Kartha. The joint family owned a land bearing No.106 L, Thiruvotriyur High Road, Tondairpet, Chennai, comprised in T.S.No.4310/1 (part), New No.4310/98, Block No.81, having an extent of eight grounds and 800 sq.ft and the land and building at No.106, Thiruvotriyur High Road, Tondairpet, Chennai, with an extent of two grounds and 1603 Sq.ft., besides the agricultural lands in Thottakkadu village in Thanjavur Taluk and District.

3. The second petitioner's father had died intestate, on 27.11.1988, and on his death, his mother, S.Sarojini and the second petitioner's mother, S.Thilakavathy and the other petitioner's became entitled to his undivided 1/4th share in the said joint family properties. Each of the petitioners 2 to 4, held an undivided 1/4th share in the said properties as co-parceners of the Hindu joint family. On the death of S.Sivaramakrishnan, each of the petitioners 2 to 4 owned an undivided 6/20th share in the joint family properties, while the first petitioner and S.Sarojini held an undivided 1/20th share each, in the said properties. Under a deed of partition, dated 30.12.1991, registered as Doc.No.1045/92, in the office of the Sub-Registrar, Royapuram, the joint family properties described in Schedule-A to the deed had been divided amongst all the legal heirs and the properties in Schedules B to D of the deed, were divided and allotted to the various persons concerned, as stated therein.

4. The deed of partition, dated 30.12.1991, had been prepared on a stamp paper, calculated on the basis of the value through separate shares of S.Sarojini and S.Thilakavathy, in respect of B & C Schedule properties and it was presented for registration before the Sub-Registrar, Royapuram, the third respondent herein. After registering, the deed of partition was delivered to the petitioners. While so, the petitioners have received a communication, dated 1.6.94, from the office of the third respondent, calling upon the petitioners to pay the deficit stamp duty and registration charges amounting to Rs.97,620/-, as pointed out in the report of the Regional Audit Officer of the Accountant General's Office, Chennai in Report No.20/245-1993-94, dated 4.11.1993. It had been pointed out by the Regional Audit Office that each of the petitioners 2 to 4 had been allotted separate shares in the `D' schedule property and therefore, an additional stamp duty of Rs.97,620/- was payable. The petitioners had objected to the payment, by their objections, dated 23.6.94. However, the third respondent, without furnishing the particulars and copies of the report, had sent a communication, dated 18.8.1994, confirming the demand for payment of additional stamp duty. Therefore, the petitioners had preferred an appeal against the said demand, under Section 33-A(3) of the Indian Stamp Act, 1899, before the first respondent.

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5. The first respondent, by a communication, dated 13.3.1995, had directed the second respondent to issue the necessary certificate, under Section 33-A of the Indian Stamp Act, 1899, after holding an enquiry by giving an opportunity to submit their representations, as mentioned in their communication, dated 24.3.1995. Thereafter, the second respondent had passed a revised order, dated 27.3.1996, confirming the certificate issued by him earlier, without holding any enquiry. Therefore, the petitioners had filed an appeal against the said order, dated 23.7.1996, before the appellate authority, the first respondent herein. The first respondent by an order, dated 28.7.97, had dismissed the appeal after receiving a written representation, on 14.7.97, filed on behalf of the petitioners. Challenging the demand for payment of additional stamp duty and registration charges, as set out in the order of the second respondent, dated 23.7.96, the petitioners had filed a petition under Section 57(1) of the Indian Stamp Act, 1899, before the first respondent, praying for an order to refer the question of law as set out in the petition, to this Court, for rendering an opinion on the same. The first respondent in his proceedings, dated 17.11.1997, without holding an enquiry, declined to refer the question of law, as prayed for by the petitioners. The petitioners had received the communication, dated 17.11.1997, on 23.8.98. Therefore, they had submitted another petition to the first respondent, along with the decision of this Court, for a fresh consideration. However, the first respondent had rejected the same, on 11.2.1999, without holding an enquiry and without giving an opportunity to the petitioners. In such circumstances, the petitioners have preferred the present writ petition before this Court, invoking Article 226 of the Constitution of India.

6. At this stage of the hearing of the writ petition, the only contention raised by the learned counsel appearing on behalf of the petitioners is that the first respondent had refused to state the case in question, under Section 57(1) of the Indian Stamp Act, 1899, even though it involves a question of law. Instead of stating the case, in accordance with Section 57(1) of the said Act, the first respondent had passed an order, dated 9.1.99, rejecting the petition, dated 29.9.98, submitted by the petitioners stating that the request of the petitioners cannot be accepted. No reasons have been given by the first respondent while passing the said order.

7. In the counter affidavit filed on behalf of the third respondent, the claims made by the petitioners are denied. It has been submitted that no question of law is involved in deciding the chargeability of the Stamp Duty to the documents in question. Hence, no reference, under Section 57(1) of the Indian Stamp Act, 1899, is required. As per Para-7 of the the partition deed, the D-Schedule property is to be enjoyed in equal shares, absolutely. Hence, each share shall be taken into account for chargeability of stamp duty deeming it as separate share, as per the note to Article 45 of Schedule 1 to the Indian Stamp Act, 1899.

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8. At this stage of the hearing of the writ petition, it was submitted by the learned counsel appearing on behalf of the petitioners that no individual orders have been issued to the petitioners till date, demanding an additional stamp duty and the registration charges, after the impugned order of the first respondent had been passed. Therefore, it is prayed that the petitioners may be given the liberty to challenge such orders, as and when they are issued, notwithstanding the order passed in the present writ petition.

9. The learned counsel appearing on behalf of the respondents has no objection for this Court passing such an order, granting liberty to the petitioners as prayed for.

10. On such submissions being made by the learned counsels appearing on behalf of the parties concerned, this Court is of the considered view that the petitioners have not shown sufficient cause or reason for this Court to grant the relief as prayed for in the present writ petition. However, it is made clear that it is open to the petitioners to challenge the proceedings that may be issued to the petitioners, individually, if so advised, in the manner known to law.

With the above observations, this writ petition stands dismissed. No costs.

Csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Chief Controlling Revenue
Authority and Inspector General
of Registration, Chennai.

2.The Assistant Inspector General of
Registration, North Madras, Chennai.

3.The Sub-Registrar, Royapuram,
Chennai-13.

+ 1 cc to the Government Pleader, SR No.73814

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